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June 30, 2023

The Honorable James O. Browning
United States District Judge
Pete V. Domenici United States Courthouse
333 Lomas Blvd, NW, Suite 660
Albuquerque, NM 87102

Via Email and First Class Mail: Browningchambers@nmd.uscourts.gov

Re: *Sierra Club v. San Juan Coal Company, et al.*, Civ. No. 10-332 JB/JHR

Dear Judge Browning:

I represent San Juan Coal Company in the above-referenced matter. I write in response to the Court's request, as issued at the June 21, 2023 hearing, to provide certain additional information concerning named Defendant BHP Billiton, Ltd.

As a preliminary matter, I do not represent BHP Billiton, Ltd. or any affiliated entity in this litigation. Instead, I entered my appearance in this matter in 2016, after the San Juan Coal Company was sold by a subsidiary of BHP Billiton, Ltd. to a subsidiary of Westmoreland Mining, LLC. As a result, the information provided concerning BHP Billiton Ltd. is based on my general understanding and may be incomplete.

With that said, my understanding is that BHP Billiton, Ltd. is a public company organized under the laws of Australia whose stock trades on the Australian Securities Exchange. The "Ltd." designation in the corporate name is analogous to the manner in which "Inc." would be used to designate a corporation in the United States, and indicates the limited liability that attaches to a corporate form.¹ My understanding is that BHP Billiton, Ltd.'s principal place of business is also in Australia.

The complaint in this matter indicates that BHP Billiton Ltd. is named as a defendant as a result of its status, at the time of filing, as the ultimate parent company of San Juan Coal Company which owns and operated the San Juan Mine. *See* Doc. 1 at ¶ 22. In or about 2016, however, BHP Billiton Ltd. or an operating subsidiary, sold San Juan Coal Company to an operating subsidiary of Westmoreland Mining, LLC. As both counsel for Sierra Club and Public Service Company of New Mexico noted at the June 21 hearing, BHP Billiton, Ltd. was never

¹ *See* https://en.wikipedia.org/wiki/Limited_company (last visited June 30, 2023) (noting that "[a]n Australian company with only Limited or Ltd after its name is a public company, such as a company listed on the ASX.")

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served with a summons and complaint in this matter and that entity has not been involved in this litigation in any way.

Finally, I would note that this Court's subject matter jurisdiction was premised on the existence of one or more federal questions arising under the Surface Mining Control and Reclamation Act, 30 U.S.C. §1270(a)(1), and the Resource Conservation and Recovery Act, 42 U.S.C. § 6972(a)(1)(B). *See* Doc. 1 at ¶ 5. Finally, the Consent Decree signed by Judge Armijo also concluded that subject matter jurisdiction exists pursuant to 28 U.S.C. § 1331 (federal question). *See* Doc. 37 at ¶ 9.

I hope this information adequately responds to the Court's request, and I would be happy to provide any additional information as may be helpful.

Respectfully,

A handwritten signature in black ink, appearing to read 'John C. Anderson', written over a horizontal line.

John C. Anderson
Partner
of Holland & Hart LLP

JCA:
None

cc: Charlie Tebutt, Esq. (via email only)
Rick Alvidrez, Esq. (via email only)